UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/54/Add.1
4 July 2001

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports due in 2000

Addendum

Israel*

[15 March 2001]

---

* For the initial report of Israel, see CAT/C/16/Add.4; for its consideration, see CAT/C/SR.183 and 184 and Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44) paras. 159-171.

For the special report submitted at the request of the Committee, see CAT/C/33/Add.2/Rev.1; for its consideration, see CAT/C/SR.295 and 296 and Official Records of the General Assembly, fifty-second session, Supplement No. 44 (A/52/44), paras. 253-260.

For the second periodic report see CAT/C/33/Add.3; for its consideration, see CAT/C/SR.336, 337 and 339 and Official Records of the General Assembly, fifty-third session, Supplement No. 44 (A/53/44), paras. 232-242.

GE.01-43043 (E) 230901

CONTENTS

		Paragraphs	Page
Introduction	.....	1 - 3	3
I.	INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION	4 - 44	3
II.	ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE	45	12
III.	COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS	46 - 54	12

Attachments*

A. Judgement of the Supreme Court: Public Committee against Torture in Israel v. the State of Israel

B. Basic Law: human dignity and liberty

* Available for consultation in the Secretariat's files.

Introduction

1. This report is submitted pursuant to article 19 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

2. Israel signed the Convention on 22 October 1986 and deposited its instrument of ratification with the Secretary-General of the United Nations on 3 October 1991. In accordance with Article 27.2 of the Convention, the Convention entered into force for Israel on 2 November 1991.

3. Israel submitted an initial report in 1994 (CAT/C/16/Add.4), a special report in 1996 (CAT/C/33/Add.2/Rev.1) and a second periodic report in 1998 (CAT/C/33/Add.3).

I. INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

4. The most significant and important new development since the submission of Israel's second Periodic report to the Committee Against Torture was the decision of Israel's Supreme Court in September 1999 concerning investigation methods used by the Israel Security Agency (ISA).[1] That was the decision of the Israel Supreme Court, sitting as the High Court of Justice, in September 1999, in the case of Public Committee Against Torture in Israel v. the State of Israel (HCJ 5100/94). A translation of that decision into English is attached to this periodic report as attachment A.

5. The Supreme Court, sitting as the High Court of Justice, had before it seven separate petitions challenging the methods used by the General Security Service (as it was then called) in the investigation of terrorist suspects. The importance of this decision is reflected in the fact that the case was heard by an expanded Supreme Court panel consisting of nine Supreme Court justices.

6. The case before the Supreme Court dealt with claims and allegations by the petitioners that certain interrogation methods used by investigators of the General Security Service during investigations were illegal. The State did not accept the contentions of the petitioners that the interrogation methods were illegal or that they constituted torture.

7. The Supreme Court in its decision did not find that the alleged interrogation methods constituted torture in violation of the Convention. In its unanimous decision, the Court held that the General Security Service was not authorized to use certain investigation methods (as set out in the Landau Commission report) that involved the use of moderate physical pressure, holding that such methods violate Israeli law.

8. The Government of Israel, in accordance with the Commissions of Inquiry Law, had appointed the Landau Commission. The Chairman of the Commission was Justice Moshe Landau, former President of Israel's Supreme Court. In the course of its inquiry, the Commission considered the legal status of the General Security Service, as well as the legality of the use of moderate means of physical pressure by investigators. Following the conclusion of its inquiry, the Commission issued a report in 1987. In its report, the Commission determined that

in dealing with dangerous terrorists who pose a grave threat to the State and its inhabitants, the use of moderate physical pressure might be unavoidable if it is necessary to obtain information for the protection of human life.[2]

9. The Supreme Court had three issues to resolve in this case: first, the petitioners had challenged the legal authority of General Security Service investigators to conduct interrogations of suspects; secondly, if they were found to have a general authority to conduct interrogations, were they empowered to use the physical means as set out in the complaints of the petitioners; and finally, if the use of such physical methods were necessary to save human lives, could this justify endowing General Security Service investigators with the authority to use such methods in those situations.

10. As to the first issue - whether the General Security Service investigators are empowered by law to conduct investigations - the Supreme Court found that there was no specific statutory provision authorizing the General Security Service investigators to conduct investigations.[3] The Court held, however, that General Security Service investigators did, in fact, have the legal authority to conduct investigations. The Court held that the statutory authority for that was to be found in section 2 (1) of the Criminal Procedure (Evidence) Ordinance. That law grants general legal authority to police officers to conduct criminal investigations. In addition, the Minister of Justice and the Minister for Public Security are authorized to empower other officials to conduct criminal investigations. The Minister of Justice, in accordance with this provision, authorized investigators of the General Security Service to conduct investigations of terrorist activities. The Court held that in view of the authorization by the Minister of Justice pursuant to this provision, investigators of the General Security Service had the same authority to conduct investigations of terrorist activities as was granted by the Ordinance to police officers to conduct investigations of criminal offences.

11. Consistent with the holding that General Security Service investigators derive their authority to investigate terrorist activities from the same statutory authorization granted to police officers, the Court determined that limitations imposed on police officers while conducting investigations of crimes also apply to General Security Service investigators. Aharon Barak, President of the Supreme Court, writing for the Court, set out this principle as follows:

> "The power to interrogate given to the GSS investigator is the same interrogation power that the law bestows upon the ordinary police force investigator. It appears that the restrictions applicable to the police investigations are equally applicable to GSS investigations. There is no statutory instruction endowing a GSS investigator with special interrogation powers that are either different or more serious than those given to the police investigator. From this we conclude that a GSS investigator, whose duty is to conduct interrogation according to the law, is subject to the same restrictions applicable to a police interrogation."[4]

12. After concluding, as set out above, that General Security Service investigators have authority to conduct investigations, the Supreme Court next examined the issue of whether that authority included the use of physical means during the course of an interrogation. In discussing the issue of the means used during an interrogation, the Court noted that, in a democratic regime, there was a clash between two values or interests:

> "A democratic, freedom-loving society does not accept that investigators use any means for the purpose of uncovering the truth. 'The interrogation practices of the police in a given regime', noted Justice Landau, 'are indicative of a regime's very character'. At times, the price of truth is so high that a democratic society is not prepared to pay it ... The rules pertaining to investigations are important to a democratic State. They reflect its character. An illegal investigation harms the suspect's human dignity. It equally harms society's image."[5]

13. The Supreme Court then set out certain general principles concerning the "law of interrogation". The Court determined that:

> "[A] reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever. There is a prohibition on the use of 'brutal or inhuman means' in the course of an investigation. Human dignity also includes the dignity of the suspect being interrogated ... These prohibitions are 'absolute'. There are no exceptions to them and there is no room for balancing. Indeed, violence directed at a suspect's body or spirit does not constitute a reasonable investigation practice."[6]

14. After setting out the general principles concerning the means of conducting a reasonable investigation, as set out above, the Court next examined each of the specific interrogation means, which the petitioners in the case had challenged. In a decisive manner, which left no room for doubt, the Court determined as follows:

(i) Concerning the use of shaking, the Court held that this is a prohibited investigation method, stating: "It harms the suspect's body. It violates his dignity. It is a violent method which does not form part of a legal investigation. It surpasses that which is necessary."[7]

(ii) Concerning the use of having a suspect crouch on the tips of his toes for long periods of time (the "frog crouch"), the Court held that "this is a prohibited investigation method. It does not serve any purpose inherent to the investigation. It is degrading and infringes upon an individual's human dignity."[8]

(iii) The Court held that painful handcuffing of a suspect is prohibited.[9]

(iv) The Court held that seating a suspect in the "Shabach" position is likewise prohibited. The court stated that such methods "do not fall within the sphere of a 'fair' interrogation. They are not reasonable. They impinge upon the suspect's dignity, his bodily integrity and his basic rights beyond what is necessary. They are not deemed as included within the general power to conduct interrogations."[10]

(v) The Court held that covering a suspect's head with an opaque sack during interrogation is prohibited, holding that such method is not inherent to an interrogation and that it is forbidden, stating that this "is not part of a fair interrogation. It harms the suspect and his (human) image. It degrades him ...

All of these things are not included in the general authority to investigate. The covering of the head in the circumstances described ... is prohibited."[11]

(vi) The Court next considered the playing of loud music while in the "Shabach" position and held that this method is prohibited.[12]

(vii) The Court further held that the use of such methods in combination is prohibited. The Court held that this is an unacceptable method and that the "duty to safeguard the detainee's dignity includes his right not to be degraded and not to be submitted to sub-human conditions in the course of his detention, of the sort likely to harm his health and potentially harm his dignity".[13]

(viii) Finally, the Court considered the use of deprivation of sleep during the course of an investigation. The Court noted that interrogations may be lengthy and as a "side effect" may cause a person not to be able to sleep during the interrogation. However, the situation changes if "sleep deprivation shifts from being a 'side effect' inherent to the interrogation, to [being] an end in itself. If the suspect is intentionally deprived of sleep for a prolonged period of time, for the purpose of tiring him out or 'breaking' him - it shall not fall within the scope of a fair and reasonable investigation. Such means harm the rights and dignity of the suspect in a manner surpassing that which is required."[14]

15. The Supreme Court next considered the third issue before the Court in these applications - whether the General Security Services may employ physical means in the course of interrogations where this is necessary to save human lives - the "necessity" defence. The State had based its arguments on this issue on the text of section 34K of Israel's Penal Law, which states as follows:

"34K - Necessity

A person will not bear criminal liability for committing an act that was immediately necessary for the purpose of saving the life, liberty, body or property, either of himself or his fellow person, from a real danger of serious harm, due to the conditions prevalent at the time the act was committed, there being no alternative means for avoiding the harm."

16. The State contended that investigators are entitled to use moderate physical pressure as a last resort in order to save human lives. The President of the Supreme Court, in the first paragraph of the judgement, described the background of constant threats to Israel's security and its civilian population posed by terrorists and terrorist acts, stating:

"The State of Israel has been engaged in an unceasing struggle for both its very existence and security, from the day of its founding. Terrorist organizations have established as their goal Israel's annihilation. Terrorist acts and the general disruption of order are their means of choice. In employing such methods, these groups do not distinguish between civilian and military targets. They carry out terrorist attacks in which scores are

murdered in public areas, public transportation, city squares and centres, theatres and coffee shops. They do not distinguish between men, women and children. They act out of cruelty and without mercy."[15]

17. The Court pointed out that many attacks planned by terrorists had been successfully prevented due to investigation by the authorities responsible for fighting terrorism, and that the main organization responsible for fighting terrorism in Israel was the General Security Service. The State had argued that such means of investigation were employed only when necessary to save human lives, and that the above section of the Penal Law provided that in such circumstances these methods did not constitute a criminal offence. The State contended that as such action, in such circumstances, does not constitute a crime, there is no reason to prohibit it *ab initio*, and that the use of such methods should not be prohibited in such circumstances.[16]

18. The Court in its decision held that while there were differences of opinion on this issue, it was ready to assume that if an investigator used physical means in the course of an investigation, under the circumstances set out in the statute, and if he were indicted for having used such means, this defence might be available to him. However, the Court held that the "necessity" defence in the case of a criminal trial of the investigator could not serve as a statutory basis for authorizing, in advance, the use of such means in the course of an investigation. The fact that a certain action did not constitute a criminal offence did not authorize an investigator to use that method in the course of an investigation. The Court held:

"The 'necessity' defense does not constitute a source of authority, allowing GSS investigators to make use of physical means during the course of interrogations ... [T]he 'necessity' defense has the effect of allowing one who acts under the circumstances of 'necessity' to escape criminal liability ... [I]t does not authorize the use of physical means for the purposes of allowing investigators to execute their duties in circumstances of necessity. The very fact that a particular act does not constitute a criminal act (due to the 'necessity' defense) does not in itself authorize the administration to carry out this deed and in doing so infringe upon human rights. The Rule of Law requires that an infringement of a human right be prescribed by statute, authorizing the administration to this effect. The lifting of criminal responsibility does not imply authorization to infringe upon a human right."[17]

19. In conclusion, the Supreme Court nullified the general directives that authorized the use during an interrogation of physical means that infringe upon a suspect's liberty.[18]

20. The importance, significance and difficulty of the Supreme Court decision must be viewed against the background that Israel's citizens and residents are under constant threat of murderous terrorist acts by persons who have no respect for the rule of law. The justices pointed this out in their decision. After recalling the difficult security situation facing Israel, as set out in paragraph 1 of the judgement, the justices acknowledged that this decision would not make it easier for the security forces to deal with this situation. However, the Court noted:

"This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it ... Deciding these applications weighed heavily on this Court. True, from the legal perspective, the road before us is

> smooth. We are, however, part of Israeli society. Its problems are known to us and we live its history. We are not isolated in an ivory tower. We live the life of this country. We are aware of the harsh reality of terrorism in which we are, at times, immersed. Our apprehension is that this decision will hamper the ability to properly deal with terrorists and terrorism which disturbs us. We are, however, judges. Our brethren require us to act according to the law. This is equally the standard that we set for ourselves. When we sit to judge, we are being judged. Therefore, we must act according to our purest conscience when we decide the law."[19]

Developments in the aftermath of the Supreme Court decision

The effect within the ISA

21. The Supreme Court decision, summarized above, had an immediate and profound effect on the conduct of all investigations by the Israel Security Agency (ISA).

22. The Israel Security Agency has always conducted investigations in accordance with the directives pertaining to such investigations. On the day that the Supreme Court decision was announced, 6 September 1999, the authorities of the ISA issued a directive to all personnel, including all investigators, directing that the decision of the Court should be strictly adhered to in all investigations conducted by the ISA.

23. While the present period of terrorism and terrorist activities against Israeli citizens and residents is a most difficult period, the investigators of the ISA are required to strictly adhere to the principles set out in the Supreme Court decision. If any investigator is found to have used physical pressure against a suspect during an investigation he will be disciplined, and where necessary will be dismissed from the Agency.

24. The principles set out in the Supreme Court decision, and the rules that now apply within the ISA as a result of that decision, are included in required courses, educational seminars and training programmes for all levels of ISA personnel.

Complaints concerning alleged misconduct by police personnel or by investigators of the Israel Security Agency

25. Persons who are detained by the Israel Police or by the Israel Security Agency for purposes of investigation are entitled to file complaints concerning any alleged mistreatment during such investigations. All such complaints are thoroughly investigated. The procedure followed in the investigation of such complaints will depend on whether the complaint involves a disciplinary action or a criminal offence.

26. If such investigation reveals a suspicion that a criminal offence may have been committed, the complaint is investigated by a special department within the Ministry of Justice - the Department for the Investigation of Police Misconduct (DIPM), which is directly responsible to the State Attorney. Any use of actual physical violence against a detainee is always treated and investigated as a criminal offence. During such investigation, the staff of the DIPM takes evidence from the complainant, from other witnesses and from the suspect. If the investigation

reveals evidence of a criminal offence, the case is transferred to the office of the District Attorney in the area where the offence occurred for a final decision on whether to file an indictment. The DIPM may also decide that the police officer or the ISA investigator should be the subject of disciplinary action, in lieu of, or in addition to, the criminal proceedings.

27. If the case involves disciplinary action to be taken against police personnel, the file in the complaint will be transferred for investigation and action by the Disciplinary Department of the Israel Police at the National Police Headquarters.

28. If the case involves disciplinary action to be taken against an investigator of the Israel Security Agency, an attorney in charge of the unit for this purpose in the office of the State Attorney at the Ministry of Justice conducts the investigation concerning the complaint. The attorney responsible for this unit states that since the Supreme Court decision in September 1999, it has been the strict policy of the Israel Security Agency that the ISA personnel may not use during the course of an investigation any of the interrogation methods which the Court held to be illegal. Indeed, since that decision, this unit has not received complaints from detainees alleging the use of such interrogation methods.

29. In addition, the Israel Security Agency has taken steps, with the assistance of the attorney in charge of this unit at the Ministry of Justice, to ensure that major improvements have been made in the living conditions of security prisoners and detainees held in detention in Israel's prisons.

30. One case currently being investigated by the DIPM may be of interest. It may be recalled that in October 2000, two Israeli reserve soldiers, made a wrong turn while driving in their car and mistakenly entered territory under the control of the Palestinian Authority. They were detained by Palestinian police at a checkpoint. The Israeli reserve soldiers were taken to a police station in the Palestinian town of Ramallah. There an unruly crowd, including Palestinian police, took part in a cruel and savage lynching of the two reserve soldiers and brutally murdered them. The bodies of the two men were thrown out to the crowd waiting outside, which mutilated their bodies. All of this was seen on live television worldwide. The Israeli security forces succeeded in arresting some of those responsible for these brutal acts of murder. One of those who were arrested complained of physical mistreatment during his interrogation at a Jerusalem police station. The State of Israel maintains that the basic human rights of all persons under its jurisdiction must never be infringed, regardless of the crimes the person or persons are suspected of having committed. The above complaint is currently being thoroughly investigated by the DIPM and, if shown to be true, disciplinary or criminal actions will be taken against the police personnel responsible.

Petitions to Israel's High Court of Justice

31. Petitions by detainees complaining of mistreatment during ISA investigations may be heard by Israel's Supreme Court, sitting as the High Court of Justice. A detainee, his family, or any person or group that claims an interest in legal or humanitarian issues, may file a petition with the High Court of Justice to seek an injunction to forbid the Israel Security Agency from using improper force or improper physical pressure during investigation. A number of such petitions have, in fact, been filed with and been heard by the High Court of Justice in the past.

32. Since the Supreme Court decision in September 1999 (reported above), two petitions have been filed with the High Court of Justice complaining of physical mistreatment during investigation by the Israel Security Agency. After these complaints were investigated by the authorities and found to be groundless, the petitioners withdrew their applications to the Court.

Legislative developments since the second periodic report

Legislative background

33. Acts of torture are designated as criminal offences under Israel's penal law. This law strictly forbids all forms of torture or other mistreatment.

34. Section 277 of Israel's Penal Law of 1977 specifically relates to the prohibition of acts of torture or other mistreatment by public servants. This section provides as follows:

> "277. Oppression by Public Servant
>
> A public servant who does one of the following is liable to imprisonment for three years:
>
> (1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession or information relating to an offence;
>
> (2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence."

35. Sections 427 and 428 of Israel's Penal Law of 1977 makes it a criminal offence to unlawfully use force or threats to force a person to do some act. These sections relate to such unlawful acts by the general public, including, of course, all State employees.

36. Section 427 provides:

> "427. Blackmail with Use of Force
>
> (a) A person who unlawfully uses force to induce a person to do some act or to refrain from doing an act which he is permitted to do is liable to imprisonment for seven years or, if the use of force leads to the doing or omission of the act, nine years ..."

37. Section 428 provides:

> "428. Blackmail by means of threats
>
> (a) A person who, in writing or by word of mouth, threatens a person with unlawful injury to his or another person's body, freedom, property, reputation or livelihood

unless he does some act or refrains from doing an act which he is permitted to do is liable to imprisonment for three years or, if the act is done or omitted because of or at the time of the threat, nine years ..."

38. The above provisions in Israel's Penal Law effectively provide that all acts of torture, as defined in article 1 of the Convention, are criminal offences under Israeli law.

39. In addition to the prohibition of torture as set out in Israel's Penal Law, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment is anchored in Israel's Basic Law. This is set out in the Basic Law: Human Dignity and Liberty, which was adopted by the Knesset in 1992, after Israel ratified the Convention against Torture. A translation of this Basic Law into English is provided in attachment B.

Legislation concerning Israel's Security Agency

40. Following a comprehensive examination of the significance of the Supreme Court judgement in the case of Public Committee against Torture in Israel v. the State of Israel (HCJ 5100/94), and notwithstanding the serious limitations that the Court's decision places on the ability and effectiveness of the security service to prevent ongoing terrorist attacks, the Israeli Government has decided not to initiate legislation that would authorize the use of physical means in investigations conducted by the ISA. The Government decided, instead, to focus on the improvement and strengthening of the ISA's general capabilities by an increase in manpower, improved technological equipment and similar measures. A special working group, headed by the Minister of Justice and the Deputy Minister of Defense, was appointed to seek effective means to implement this governmental decision.

41. A private member's bill was submitted to the Knesset by a group of Knesset members that would authorize the use of limited physical means of investigation in certain specific circumstances. The ministerial committee of the Government, headed by the Minister of Justice, opposed this proposed bill. This private member's bill has yet to be brought to a preliminary hearing before the Knesset. The Prime Minister of Israel publicly rejected the provisions of this private bill during a plenum session of the Knesset.

42. As reported in Israel's previous periodic report, the Government proposed a new law to the Knesset in February 1998 that would govern the structure and activities of the Israel Security Agency. This proposed new legislation, among other provisions, would provide new, additional mechanisms for the review of the activities of the ISA. The new proposed mechanisms would be in addition to current mechanisms for review, which include the possibility of petitions to the court system and investigations by the State Comptroller. This proposed legislation contains no provisions concerning the investigative methods which investigators of the ISA are permitted to use. This proposed law has passed its first reading in the Knesset and was transferred for further consideration to a special joint Knesset committee consisting of the Knesset Constitution, Law and Justice Committee and the Knesset Security and Foreign Affairs Committee.

43. In accordance with the proposed law, the ISA will be subject to the authority of the Government. The Government will appoint the director of the ISA, on the recommendation of the Prime Minister. The proposed law provides that a special ministerial committee of the

Government will be established which will be responsible for ministerial scrutiny and oversight of the ISA. The law also provides for parliamentary oversight of the activities of the ISA, which will be provided by a special committee of the Knesset. The proposed law further sets out the functions and powers of the ISA. The objectives of the ISA will include protecting the security of the State and protection for State authorities and State institutions from terrorism, espionage and other similar threats. The ISA would be given authority and power under the law to conduct investigations. The director of the ISA will provide periodic reports to the ministerial committee and to the Knesset committee.

44. This proposed law is currently pending before the aforementioned special joint committee of the Knesset.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

45. The Committee, in its concluding observations following its consideration of Israel's second periodic report (A/53/44, paras. 232-242), did not request any additional information from the State of Israel.

III. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

46. The Committee, in its concluding observations on Israel's second periodic report (A/53/44, paras. 232-242), made the following conclusions and recommendations (paras. 240-241):

> Paragraph 240 (a) "Interrogations applying the methods referred to above are in conflict with articles 1, 2, and 16 of the Convention and should cease immediately."

47. As set out in Israel's previous reports to the Committee, Israel asserts that the methods which had been employed in investigations by Israel's security service (referred to as the "Landau Rules") do not constitute torture or cruel, inhuman or degrading treatment and do not violate the provisions of the Convention.

48. Israel's Supreme Court, in a judgement handed down in September 1999, (Public Committee Against Torture in Israel v. the State of Israel), ruled that such interrogation methods are illegal under Israeli law, as they infringe on the dignity of the person being investigated. The Court, in its judgement, did not reject the arguments of the State that such interrogation methods did not constitute torture or cruel, inhuman or degrading treatment and do not violate the Convention. The judgement of the Supreme Court is summarized in part I of this third periodic report. An English translation of that decision is contained in attachment A to this report.

> Paragraph 240 (b) "The provisions of the Convention should be incorporated by legislation into Israeli law, particularly the definition of torture contained in article 1 of the Convention."

49. As stated in part I of this report, sections 277, 427 and 428 of Israel's Penal Law of 1977 (the texts of these sections are set out in part I of this report) strictly forbid all forms of torture or

maltreatment. Thus all acts of torture, as defined in article 1 of the Convention, are criminal acts under Israel's Penal Law. In addition, all forms of torture or other cruel, inhuman or degrading treatment or punishment are prohibited by Israel's Basic Law: Human Dignity and Liberty, which is set out in full as attachment B to this periodic report. This Basic Law has constitutional status within Israel's legislative framework. Section 2 of the Basic Law prohibits any violation of the life, body or dignity of any person. Section 4 guarantees to all persons the right to protection of their life, body and dignity. These provisions of the Basic Law constitute a prohibition of cruel, inhuman or degrading treatment or punishment, including torture. The Israeli Knesset enacted this Basic Law in 1992, after Israel ratified the Convention against Torture.

50. Following the unanimous decision of Israel's Supreme Court, in the case of Public Committee against Torture in Israel v. the State of Israel (as summarized in part I), it is clear that all provisions of the Convention are, in fact, a part of Israeli law. It is clear that any action that would constitute a violation of the Convention is a violation of the law of Israel and is prohibited under the law in Israel.

> Paragraph 240 (c) "Israel should consider withdrawing its reservations to article 20 and declaring in favour of articles 21 and 22."

51. Upon ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the State of Israel declared that in accordance with article 28 of the Convention, it did not recognize the competence of the Committee provided in article 20. Furthermore, the State of Israel did not declare in favour of articles 21 and 22 of the Convention, which recognize the competence of the Committee to receive and consider complaints from other States parties or from individuals, respectively.

52. Having reviewed the above declaration in light of the Committee's recommendations, Israel maintains that it is unlikely that the circumstances in the foreseeable future will permit it to change its position. However, Israel will continue to review its position in this regard.

> Paragraph 240 (d) "Interrogation procedures pursuant to the 'Landau rules' should in any event be published in full."

53. Israel's Supreme Court, in its judgement in the case of Public Committee against Torture in Israel v. the State of Israel (as reported herein), held that interrogation procedures pursuant to the "Landau rules" are illegal under Israel's law. Since September 1999, such methods are no longer used by Israel's security service. For this reason, the publication of such rules is no longer relevant.

> Paragraph 241 "The practice of administrative detention in the occupied territories should be reviewed in order to ensure its conformity with article 16."

54. Israel wishes to report that there has recently been a drastic reduction in the number of persons held in administrative detention, and at the present there are 11 persons being held in administrative detention for security reasons. In addition, no persons are being held in administrative detention in the occupied territories. The conditions in which such persons are

held in administrative detention do conform to article 16. Those held in administrative detention have the right to file petitions with the Courts in Israel to review the legality of their being held in detention, including the legality of the conditions of their detention.

Notes

[1] The former name of Israel's security service - General Security Service - has recently been changed to Israel Security Agency (ISA).

[2] Paragraph 16 of the Supreme Court decision, p. 10 of the English translation (attachment A).

[3] Paragraph 20 of the Supreme Court decision, p. 14 of the English translation (attachment A).

[4] Paragraph 32 of the Supreme Court decision, p. 21 of the English translation (attachment A).

[5] Paragraph 22 of the Supreme Court decision, pp. 15-16 of the English translation (attachment A).

[6] Paragraph 23 of the Supreme Court decision, p. 17 of the English translation (attachment A).

[7] Paragraph 24 of the Supreme Court decision, p. 17 of the English translation (attachment A).

[8] Paragraph 25 of the Supreme Court decision, pp. 17-18 of the English translation (attachment A).

[9] Paragraph 26 of the Supreme Court decision, p. 18 of the English translation (attachment A).

[10] Paragraph 27 of the Supreme Court decision, p. 18 of the English translation (attachment A).

[11] Paragraph 28 of the Supreme Court decision, p. 19 of the English translation (attachment A).

[12] Paragraph 29 of the Supreme Court decision, pp. 19-20 of the English translation (attachment A).

[13] Paragraph 30 of the Supreme Court decision, p. 20 of the English translation (attachment A).

[14] Paragraph 31 of the Supreme Court decision, pp. 20-21 of the English translation (attachment A).

[15] Paragraph 1 of the Supreme Court decision, p. 3 of the English translation (Attachment A).

[16] Paragraph 15 of the Supreme Court decision, pp. 9-10 of the English translation, and paragraph 33, pp. 21-22 of the English translation (attachment A).

[17] Paragraph 36 of the Supreme Court decision, pp. 23-24 of the English translation (attachment A).

[18] Paragraphs 37 and 38 of the Supreme Court decision, pp. 25-26 of the English translation (attachment A).

[19] Paragraphs 39-40 of the Supreme Court decision, pp. 26-27 of the English translation (attachment A).

UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/54/Add.2
30 October 2001

Original: ENGLISH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 2000

Addendum

CYPRUS*

[29 June 2001]

CONTENTS

	Paragraphs	Page
Introduction	1 - 3	2
I. INFORMATION ON NEW DEVELOPMENTS AND MEASURES TAKEN IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION	4 - 76	2
II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE	77 - 80	14
Conclusion	81 - 83	14

* For the initial report of Cyprus, see CAT/C/16/Add.2; for its consideration, see CAT/C/SR.168 and 169 and Official Records of the General Assembly, Forty-ninth Session, Supplement No. 44 (A/49/44), paras. 118-127.

For the second periodic report, see CAT/C/33/Add.1; for its consideration, see CAT/C/SR.301 and 302 and Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44), paras. 42-51.

GE.01-45645 (E) 210101

Introduction

1. This is the third periodic report of the Republic of Cyprus submitted under article 19 of the Convention. The initial report and the second periodic report have been submitted to the Committee and were considered on 17 November 1993 and 11 November 1997 respectively.

2. In preparing this report the following were taken into consideration:

(a) The guidelines of the Committee as adopted by the Committee at its 85th meeting on 1 May 1998;

(b) The conclusion and recommendation of the Committee as adopted at its 301st and 302nd meetings on 11 November 1997;

(c) The steps taken by the Republic of Cyprus and the developments which occurred regarding the implementation of the Convention since the consideration of the second periodic report;

(d) Information on matters which remained unanswered during the consideration of the second periodic report;

(e) Contemplated future action.

3. In accordance with the guidelines, the report is divided into two parts. The first part deals with new developments, steps and measures taken during the period between the consideration of the second periodic report and the preparation of this report. The second part contains additional information requested by the Committee.

I. INFORMATION ON NEW DEVELOPMENTS AND MEASURES TAKEN IN RELATION TO THE IMPLEMENTATION OF THE CONVENTION

Developments after the submission of the Second Periodic Report

4. The following major developments occurred after the consideration of the second periodic report:

(a) The enactment of a law regarding mental health (paras. 5-11);

(b) Amendment of the Criminal Procedure Law, Cap. 155, regarding the inability to plead (paras. 12-15);

(c) Abolition of death penalty (para. 16);

(d) The enactment of a law providing for the grant of political asylum to refugees (paras. 17-19);

(e) The enactment of a new law providing for the suppression of trafficking of persons and sexual exploitation (paras. 20-27);

(f) The enactment of a new law providing for the prevention of domestic violence (paras. 28-37);

(g) The preparation and submission for consideration of a draft law providing for the protection of witnesses and victims of violence (paras. 38-43);

(h) Pre-deportation detention (para. 44);

(i) Amendment of the Cyprus Nationality Law.

The Psychiatric Treatment Law 1997

5. The Psychiatric Treatment Law 1997 (77 (I) of 1997) was enacted after the submission of the second periodic report and before its consideration by the Committee. An analysis of this law was given in an introductory statement by the senior counsel of the Republic who presented the report. For the purposes of convenience details of the new law are given.

6. The new law replaces the Mental Patients Law, Cap. 252, and is based on a completely new concept regarding the treatment of mental patients. In the old law a mental patient was treated like a criminal whereas in the new law he is treated like any other person except to the extent where compulsory treatment is necessary owing to the patient's condition rendering him dangerous to himself or to others.

7. Psychiatric treatment is provided on a voluntary basis or where the element of dangerousness exists, and in this case treatment is compulsory. However, compulsory treatment is not for an indefinite period of time and its duration is subject to judicial control; the patient may also request its termination.

8. An important institution is the establishment of a supervisory committee with multifarious functions, the most important of which is the hearing and examination of complaints in relation to the detention and treatment of patients.

9. Another important provision is the appointment of a guardian for giving the necessary consents required under the Law where the patient is not in a position to do so.

10. The patient's right to communicate with any person outside the centre while receiving compulsory treatment is safeguarded to the extent that such communication does not affect the treatment.

11. The courts are provided with a new power regarding the sentencing of persons suffering from mental disorder of the nature justifying compulsory treatment. The court may, in such a case, in lieu of any other sentence, order the compulsory treatment of the accused in a high-security centre. The old legislation did not provide such power to the court and the practice was to send the accused to prison and from there to transfer him to the mental hospital.

12. Another important provision is the obligation of the treating psychiatrist to consult the multidisciplinary professional committee whenever reports are submitted to the court for the conversion of treatment from voluntary to compulsory.

13. Moreover, another safeguard for the prevention of arbitrary treatment is the condition that before such treatment is carried out the consent of the patient or his personal representative must be secured.

14. The latest data regarding the treatment of persons suffering from mental disorder are as follows:

(a) In the mental hospital there are now (October 2000) 188 inpatients, whereas in 1980 there were 770. Out of these 188 persons 54 are mentally retarded and 30 are suffering from senility;

(b) The psychiatric wings of the general hospitals have a capacity for 46 persons;

(c) Treatment is further provided on an outpatient basis at the general hospitals.

15. Section 38 of the Psychiatric Treatment Law (77 (I) of 1997) provides for the issuance by the court of a psychiatric treatment order for convicted persons as an alternative to the other methods of punishment. The order is issued where the convicted person is suffering from severe mental disorder of such a nature and degree as to justify the detention of the person in an appropriate centre for the necessary mental treatment.

16. Unfortunately, this provision has not as yet been put into operation because of a confusing provision in the law which refers to centres for criminal mental patients and such centres have not yet been declared under the law. Steps are, however, being taken to establish such a centre, particularly in view of the fact that the policy for treating mentally disturbed persons is to treat them at special sections of general hospitals.

17. However, the establishment of special centres for mentally disturbed convicted persons may not in fact be needed because, in the first place, no distinction is made in the law between a mental patient and a criminal mental patient and convicted persons may be treated at a centre intended for persons suffering from severe mental disorder. Secondly, it is not known how many persons, if any, were considered proper subjects for the making of such an order but no order was made because of the lack of special centres.

18. The above situation is expected to be redressed soon, if necessary by the amendment of the law, thus facilitating its effective implementation whenever the need arises. However the situation regarding the treatment of prisoners suffering from mental disorder needs improvement. This was also noted by the Commissioner for Administration in an ad hoc investigation carried out at his own initiative. The visits of a psychiatrist must be more frequent and the placement of permanent nursing staff is imperative. It is expected that the situation will improve with the establishment of a special unit for the treatment of mentally disturbed prisoners. The unit will consist of one psychiatrist, one clinical psychologist and two work therapists who will receive education and training on criminology.

19. Presently there are approximately 35 persons in the prison to whom psychotropic drugs have been prescribed by the government psychiatrist.

Inability to plead

20. In 1997, section 70 of the Criminal Procedure Law, Cap. 155, was amended (Law 89 (I) 1997) so as to harmonize its provisions with the new approach regarding metal patients.

21. Section 70 of the Law deals with the procedure which is followed when the accused brought before the court is unable to follow the proceedings due to insanity. Before the amendment of this section, the court gave directions for an inquiry to be carried out as to the mental state of the accused and if the inquiry showed that the accused was indeed insane and unable to follow the proceedings, the court ordered his/her detention for an indefinite period, at the pleasure of Her Majesty when Cyprus was a colony or at the pleasure of the Council of Ministers of Cyprus after Cyprus became a republic. The inequity of this provision is obvious: a person who could have been proven innocent at trial was sent for an indefinite period to a mental hospital just because he/she could not follow the proceedings.

22. Under the new law an inquiry is not undertaken unless the court, after reviewing the statements and evidence in the hands of the prosecution, forms the opinion that there is a prima facie case against the accused. If the court is not satisfied that there is a case against the accused, it orders his/her release; in such a case, if the condition of the accused is such as to warrant compulsory treatment then the provisions of the Psychiatric Treatment Law are invoked.

23. However, if after an inquiry the accused is proved to be unable to follow the proceedings, then the case is adjourned and the accused is placed under the care of a psychiatrist for treatment until his/her condition improves to the point where he/she is able to follow the proceedings. The court may instead order the detention of the accused in a psychiatric centre for treatment for a period of time analogous to that provided by Law 77 (I) of 1997.

Abolition of the death penalty

24. The death penalty has now been abolished for all offences, with the exception of treason committed in time of war where such penalty may be pronounced by a military court as a matter of discretion.

Political asylum: the Refugees Law (6 (I)/2000)

25. The bill regarding the seeking of political asylum by refugees was enacted into law early in 2000 (6 (I) of 2000).

26. Briefly, the Law consists of six parts and it regulates:

(a) The entry of asylum-seekers in the Republic and the issue of a permit for temporary residence (Part II);

(b) The procedure for the granting of asylum (Part III);

(c) The rights and obligations of the refugees who are granted asylum;

(d) The establishment of a Refugee Authority with power to receive, consider and decide applications for recognition of the status of refugee.

27. The Authority is composed of the permanent secretaries of the Ministry of Foreign Affairs and the Ministry of Justice and Public Order. The permanent secretaries may appoint a representative from their ministry to act on their behalf for a period of three years.

The Suppression of the Traffic in Persons and of the Sexual Exploitation of Children Law of 2000 (3 (I) of 2000)

28. Under this law any act which is considered as trafficking in persons under the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others is an offence, along with other similar activity specified in the Law, and a penalty of 10 years' imprisonment or a fine of £1,000 is provided. Where the victim is a person under the age of 18 the penalty is increased to 15 years' imprisonment or a fine of £15,000.

29. Section 3 defines and specifies the offences of sexual exploitation. Such offences are punishable by imprisonment of 15 years. If the offences are committed by relatives or persons exercising authority or influence on the victim, the penalty is 20 years' imprisonment.

30. Section 4 makes an offence the use of children for the production and marketing of pornographic material.

31. Under section 7, State aid is accorded within reason to victims of exploitation and involves maintenance, temporary shelter, medical care and psychiatric support.

32. Section 8 restates the right to compensation with emphasis on the power of the court to award punitive damages when the degree of exploitation or the degree of domination of the accused over the victim so warrants.

33. A foreign worker who is lawfully in Cyprus and who is the victim of exploitation may apply to the authorities for employment elsewhere for the remaining part of the period for which his original permit was granted (sect. 9).

34. Finally, the Council of Ministers may appoint under section 10 a guardian for victims whose main functions are:

(a) To advise and give guidance to victims;

(b) To hear complaints of exploitation;

(c) To provide treatment and accommodation to victims;

(d) To take all steps for the prosecution of offenders under the law;

(e) To take all steps for the rehabilitation and re-employment or repatriation of victims;

(f) To identify any weaknesses or deficiencies in the Law and make recommendations for their eradication.

35. It may be noted that the proceeds from any action constituting an offence under this Law are subject to confiscation under the relevant law (Prevention and Suppression of Money Laundering Activities Law of 1996 (61 (I) of 1996)). Moreover, the Cyprus courts have extended jurisdiction to try offences under the law whenever and by whomsoever committed.

Prevention of domestic violence

36. In 1994 a law was enacted for the prevention of violence in the family and the protection of victims. Soon after the enactment of the law certain difficulties were encountered in its implementation and a process started for its amendment. An amending bill was prepared in which there were included a number of novel provisions such as the taking of a statement from the victim by electronic means, the use of such statements as the evidence of the chief witness which is subject to cross-examination, the setting up of a fund for financial assistance to the victims and certain other measures aiming at the protection of the victims and witnesses both inside and outside the court. However, when the amending bill was sent to the House of Representatives, it was considered that it would be better, owing to the extensive amendments proposed, to prepare a new law repealing and replacing the old one. Thereafter, a new bill was prepared which was enacted into law in July 2000.

37. The new law has been completely restructured as it is divided into parts. Briefly, Part II deals with the meaning and scope of violence and Part III with the appointment of family counsellors and committees. Part IV introduces new provisions regarding the taking of statements by the use of audio-visual electronic means. Statements obtained by the use of these means may be produced in evidence without the need to examine the chief witness. Such witness is, however, available to the other side for cross-examination. Part V contains provisions for a speedy trial and for the protection of the witness from harassment or intimidation.

38. Section 17 deals with the admissibility of the evidence of a psychiatrist to whom a child patient recounts incidents of ill-treatment by any person. Such evidence, however, requires corroboration by independent evidence. This is a novel provision and one which constitutes an exception to the hearsay rule.

39. Under section 18 the court is empowered to provide protection to witnesses and victims of violence by taking their evidence in such a way as to avoid direct confrontation with the accused but without depriving the accused of his right to examine the witness. This may be achieved by the use of screens, closed circuit television links and other means producing the same effect.

40. Under section 19 the court may interfere and give directions regarding the mode of cross-examination with a view to avoiding bullying of the witness.

41. Sections 19 and 20 make the spouse a compellable witness if the victim of domestic violence is another member of the family. It is interesting to note that in an indirect way the spouse is a compellable witness even in the case where the violence is directed against the spouse and this is done in the presence of children, because in such a case the violence is deemed to be exercised against the child.

42. Sections 21-25 deal with the issue of restraining orders against the offending members of the family. These provisions were incorporated from the old law.

43. New provisions are contained in Part VII of the law regarding the establishment of a fund for the provision of assistance to victims of violence.

44. Sections 31 and 32 provide for the establishment and operation of shelters for victims. Any person harassing any person residing in a shelter commits an aggravated offence punishable with five years' imprisonment. If the harassment or intimidation of any victim of violence or of a witness in a case of domestic violence takes place elsewhere, the harassment or intimidation constitutes an offence punishable with three years' imprisonment.

45. Finally, under section 34 it is an offence for any person to disclose the identity of the victim or particulars of the offender that may lead to the identification of the victim. This is an absolute prohibition and covers practically any person who acts contrary to the provisions of the section.

Protection of witnesses

46. There is a new draft law, which will soon be laid before the House of Representatives, providing for the protection of witnesses.

47. The bill is based on ideas contained in Recommendation No. R(97)113 of the Council of Europe concerning intimidation of witnesses and the rights of the defence to a fair trial.

48. Many of the provisions contained in the law for the protection of victims of domestic violence are being carried forward to the new bill such as the taking of a statement by the use of electronic audiovisual means and the taking of evidence in court in such a way and using such means as to avoid direct confrontation of the accused and the witness, thus protecting the witness from intimidation.

49. The provisions of the new law in fact overlap with some of the provisions contained in the law on domestic violence, but this does not interfere with or affect the implementation of the two laws. Perhaps at some future time after the enactment of the law the two laws may be consolidated.

50. A provision which is new to the aforesaid bill for the protection of witnesses is the one concerning the anonymity of witnesses. The anonymity of witnesses is a very controversial

issue, but is necessary if persons are to be encouraged to testify in certain cases that expose them to danger. However, such protection should not affect the right of the accused to a fair trial. At present, it seems that the Dutch Code of Criminal Procedure contains a procedure which was tested in the Doorson judgement of the European Court of Human Rights and which was found not to be incompatible with the European Convention on Human Rights. Under the provisions of the Dutch Code a witness can be heard by the Rechter Commissaris (judicial authority in charge of the pre-trial investigation prior to the main trial) in a separate procedure during which the identity of the witness is not disclosed to the accused or his counsel. The defence is entitled to question the witness by submitting the question to the official who inquires about the credibility and reputation of the witness, and if he decides to grant anonymity the witness is excused from appearing at the trial. However, no conviction can be based solely on the statement of an anonymous witness unless it is corroborated by other evidence.

51. Cyprus follows the accusatorial system where there is a distinct separation of the functions of the prosecution, the defence and the judge, whereas it seems that in the Netherlands the system followed is the inquisitorial system where the pre-trial investigation is conducted by a quasi-judicial prosecutor. In view of this, the Dutch solution cannot be applied in Cyprus by reason of the fact that the court is the final arbiter of the credibility of the witness and of the weight of evidence, and therefore it cannot accept and rely on the findings of another official, even if he is a judicial officer. In view of this, what is proposed in the bill is a "side trial" by the trial court itself on the anonymity of a witness, following the same rules as those followed by a Rechter Commissaris. In this way the trial court would rely on its own findings and conclusion, and it seems that the strict requirement of corroboration may not be applied with such strictness as to exclude a conviction in the absence thereof. It is therefore proposed in the bill that the court may convict even without corroboration if, having considered all the evidence and having seen and evaluated the demeanour of the anonymous witness, it feels able to convict.

Pre-deportation detention

52. Under the Aliens and Immigration Law, Cap. 105, a person awaiting deportation may not be detained for a period of more than eight days unless the court authorizes detention for a longer period. This provision is under revision and a bill is pending providing for the intervention of the court regarding the duration of the period for which an alien under deportation order is to be detained. Under the proposed bill an alien arrested for the purpose of deportation is brought before the court not later than six days after his arrest and the court, if satisfied that the detention is justified, may sanction the detention for any period not exceeding three months. The court may, if not satisfied as to the reasons for the detention, order the release of the alien under such terms as the court may deem necessary for securing the attendance of the alien at a certain day, time and place for deportation.

Draft laws still pending

53. The draft law regarding the Interpretation and Implementation of International Treaties mentioned in the supplementary report has not been promoted further. However, for purposes of clarity and to avoid unnecessary confusion, when a treaty is ratified the ratifying law expressly states the articles of the treaty which are self-executing and machinery is provided for the implementation of the articles which are not self-executing.

54. The new Evidence Law is still pending before the House of Representatives. The new law would substitute the evidentiary system of Europe for the existing Anglo-Saxon system. The proposal has caused great controversy in the House and for the time being the prospects of its enactment into law are not strong.

Complaints against police for ill-treatment: special investigators appointed by the Attorney-General

55. By decision of the Council of Ministers taken on 3 October 1996, the power to appoint criminal investigators which is afforded to the Council under section 4 of the Criminal Procedure Law, Cap. 155, for the purpose of investigating the commission of criminal offences has been delegated to the Attorney-General, to be exercised in cases of written complaints submitted to him against members of the police force concerning the commission of any criminal offence. This is considered to be a welcome development as the Attorney-General is in a better position than the Council of Ministers to react swiftly to any such complaint. In any event, the Council of Ministers retains in parallel the power to appoint a criminal investigator.

56. Criminal investigators appointed as above are empowered under the Criminal Procedure Law to take signed statements from all persons whom they have reason to believe have knowledge of facts or circumstances regarding the criminal offence in relation to which the investigation is being carried out. In general, they have the same powers as a police criminal investigator has when investigating an offence.

57. Complaints as above can be submitted not only by the complainants themselves but also by lawyers representing them, or through human rights associations, journalists, or members of the House of Representatives. The ensuing instrument of appointment of investigators is communicated by the Attorney-General to the person submitting the complaint and to the Chief of Police.

58. Upon completion of the investigation, the investigator submits to the Attorney-General the file of the investigation containing the statements he has taken and any other evidential material obtained in the course of investigation. An investigation report, also prepared by the investigator and submitted with the file, gives a brief account of steps taken in the investigation and a summary of the evidence obtained, with the investigator's findings and suggestions on the basis thereof.

59. The decision whether to institute criminal proceedings is taken by the Attorney-General, in consultation with counsel from his Office, after study and evaluation of the investigation file. If a piece of evidence which the Attorney-General considers to be necessary is missing, or the case needs to be investigated further, instructions are given to the investigator concerned to pursue the matter, for example by obtaining supplementary statements, or statements from additional witnesses, or through identification parades to be conducted in pursuance of his instructions.

60. The Attorney-General's decision on the institution of criminal proceedings, is communicated to the person who has submitted the complaint, and to the Chief of Police, together with the investigator's report.

Complaints; National Institution for the Protection of Human Rights

61. Complaints of ill-treatment may now be made to the National Institution for the Protection of Human Rights which was established about two years ago. The hearing of complaints by the Institution does not affect in any way the hearing of complaints by other agencies. In particular, there is a specific provision that the investigation of complaints will only be carried out by the Institution if such investigation does not fall within the competence of the courts or of the Commissioner for Administration.

62. The Institution was established by a decision of the Council of Ministers dated 16 September 1998, but the Government may not interfere in any way in its function. It is an independent organization, as is the judiciary, the Attorney-General and the Commissioner for Administration. The appointment of the President and members of the Institution is made by the Council of Ministers, but this does not affect their independence. The reason that it was considered necessary for the Government to establish the Institution was to ensure the effective preparation of the reports submitted to the various treaty monitoring committees under the International Covenants or conventions. This function is one of the competences of the Institution. It may be mentioned that before the establishment of the Institution the reports were prepared by a team appointed by the Council of Ministers headed by the Law Commissioner. The members of the team represented government departments, the Attorney-General and the Commissioner for Administration.

63. In considering the establishment and constitution of the Institution, a balance was sought between the dependence of the Institution on the Government's financial contribution and its independence regarding the hearing of complaints of violation of human rights. This was achieved by creating two committees. One is composed of government officials and has the task of preparing the various reports and questionnaires from various agencies; the other committee is composed of representatives from the private sector covering a wide cross-section of society and has the task of hearing complaints. The President of the Institution is the Law Commissioner and the President of the complaints committee is a practising lawyer of long standing. The reports which are prepared by the committee composed of government officials are distributed to all the members of the Institution for their views and in this way the impartiality of the statements contained therein is ensured.

64. The Institution, apart from the preparation of the various reports, also makes recommendations for the harmonization of the law with the provisions of the various conventions. It must further be stressed that the Institution does not simply make recommendations; these are formulated into draft laws which are discussed at meetings headed by the Law Commissioner which, when finalized, are submitted by the ministry which participates in the deliberations to the Council of Ministers for approval and thereafter to the House of Representatives for enactment. It may be mentioned that the Laws for Psychiatric Treatment, for the amendment of section 70 of the Criminal Procedure Law, for the Protection of Victims of Violence in the Family and of Victims of Sexual Exploitation, and the new legislation regarding Civil Debts, were initiated and promoted by the Institution.

65. The Institution has received so far a total of 38 complaints of alleged violation of human rights. The written complaints, if they are made against public officials, are sent to the

Commissioner for Administration to decide whether they fall within her competence and if so, she proceeds to investigate them. If the complaints are made orally, the secretary of the Institution writes them down and then they are sent to the Commissioner for Administration for processing. The Institution also arranges for the taking of complaints from persons under detention. Most of the complaints received by the Institution proved to be outside its competence and those few which were within its competence were civil disputes which could only be dealt with in a court of law. Some complaints were unfounded, but a sympathetic approach was adopted for placating the distressed complainants (one of them was labouring under the illusion of persecution). In another case, a labourer working in a private enterprise was feeling "oppressed" by the foreman. The Institution requested the employer to look into the complaint and show understanding, and the employer, to his credit, acceded to the request.

66. For purposes of clarification, the Institution has competence where the complaint is against a person in the private sector and this is the area where the Commissioner for Administration has no jurisdiction.

67. It should be clarified that the Institution also organizes lectures and prepares publications promoting the awareness of the public regarding human rights. In particular, two seminars were organized for educators regarding the teaching of human rights as a subject in schools of secondary education. Similar seminars are being planned for elementary education teachers. Moreover, a handbook regarding human rights in Cyprus and how they are safeguarded was prepared and is distributed free of charge. Also, the main conventions were published in two volumes and an index of all the conventions regarding human rights in force in Cyprus was also prepared.

Commissioner for Administration

68. The Commissioner for Administration is now an entrenched institution which functions smoothly and efficiently and provides an important safeguard for the respect of human rights. Every year more and more people resort to the Commissioner for their complaints against maladministration. It may be said without any degree of exaggeration that the foreigners residing and working in Cyprus found in the institution a guardian of their rights and a protector for unjust treatment, particularly regarding their expulsion from the island. Although the findings of the Commissioner are not enforceable, yet they carry considerable weight and sometimes they may even lead to amendments of the law.

69. The Commissioner could not conduct an investigation on her own motion until early in 2000 when the law was amended and such investigation may now be carried out. The Commissioner exercising this new power carried out an investigation as to the conditions of detention and treatment of prisoners suffering from mental disorder. The findings are under consideration for remedying the situation.

70. During the last five years a large number of complaints for violation of human rights were dealt with. In particular, for the years 1996 to 2000 inclusive a total of 398 complaints were dealt with out of which 299 were complaints against the police. In 1996 there were 45 cases, in 1997: 71, in 1998: 56, in 1999: 60 and in 2000: 67.

Police and ill-treatment: a new approach

71. Regarding the conduct of police officers towards suspects and the respect of the suspects' rights, the following measures are being taken:

(a) During the initial and in-service training, police officers are educated and trained in the use of modern investigation techniques. They are instructed to interrogate and take statements from suspects according to the "Judges' Rules" which are directives issued by the Home Office of the United Kingdom and are applicable in Cyprus by an express provision in the Criminal Procedure Law, Cap. 155 (sect. 8);

(b) Circular letters are sent by the Chief of Police to all police commanders and departments and units calling upon them to respect the rights of the suspects during their interrogation;

(c) The Police Academy lays great emphasis on lectures and courses concerning the respect and protection of human rights. These lectures are given by university professors, the Attorney-General, law officers and qualified senior police officers.

72. In the years 1997-2000 there was a total of 41 complaints against members of the police force for using violence. Out of the 41 cases only 32 involved actual use of physical violence. In 1999 only four such cases were reported. However, the reduction in the number of complaints may be susceptible to a dual interpretation: a positive interpretation that there were no complaints because there were no incidents of ill-treatment, and a negative interpretation that there were incidents but they were not reported out of fear. However, the reduction in the number of the complaints in 1999 is an encouraging indication and may accept a positive interpretation because people can now make a complaint freely to independent officers and agencies and in fact, as may be noted from the data provided by the Office of the Commissioner for Administration, people are taking full advantage of the services and function of the Commissioner.

73. The police, in an effort to change old attitudes and practices and to adopt new ones, the main one being the respect of human rights in the execution of police duty, established in 1998 a Human Rights Office. This office is headed by a Chief Superintendent of Police and receives monthly statistical data from all police divisions regarding information of any complaints of ill-treatment.

74. Also in an attempt to increase sensitivity in the field of human rights, great emphasis has been placed on lectures and specialized courses given at the Police Academy regarding the respect and protection of human rights. These lectures continue to be given by university professors, by the Attorney-General of the Republic himself and other members of his Office and by qualified senior police officers. Similar lectures are also given in all regional police departments.

75. It is further to be noted that during basic and advanced training, police officers are given lectures and are trained in modern investigation techniques. They are also instructed to interrogate and obtain statements from suspects according to the provisions of the Criminal Procedure Law, Cap. 155, and the Judges' Rules.

Programme for judges

76. The Supreme Court in 1999 established a programme for the training of judges of first instance in various fields of the law and matters relevant to broadening the perspective in the administration of justice. The subjects of training include, amongst others:

(a) Human rights with particular reference to Cyprus case-law and the European Court of Human Rights case-law;

(b) European law, with particular reference to international conventions;

(c) The conduct of judges, with emphasis on the psychology of witnesses and advocates, rules of etiquette towards the public and advocates and the study of various social phenomena;

(d) The training of Family Court judges on matters relating to dealing with children and social matters relating to personal status.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

77. All the information requested by the Committee was included in Part I because it was closely connected with the topics falling therein.

78. Going through the short list of subjects of concern and the recommendations made by the Committee, reference will be made to the relevant paragraphs in Part I dealing with the topics of concern.

79. The incidents of ill-treatment by the police are dealt with in paragraphs 71 to 75. It is to be noted that serious genuine efforts are being made to change old attitudes towards interrogations and it is hoped that the situation will improve even further.

80. Reference is further made to paragraph 76 of the report regarding the training of judges.

Conclusion

81. Cyprus is particularly sensitive in relation to the respect of human rights because the rights of the people of Cyprus have been and still are flagrantly violated by the invading forces that are occupying a major part of the island.

82. Moreover, the educational, cultural and economic standard of the people in Cyprus is so high as to make them intolerant to any act that violates human rights, particularly the rights to life and personal integrity. It may be stressed that the mass media and the House of Representatives are so sensitive that they would not let any case of serious violation of human rights which comes to their attention be ignored without any comment or investigation.

83. It is by no means suggested that Cyprus is an exemplary case of absolute respect of human rights. Undoubtedly, there is room for improvement in many areas but efforts are continuously being made to remedy the situation in these areas, and this is evident from the number of laws and arrangements that have been made in this respect during the last six years.